

COMMITTEE STATEMENT

LB 226

HEARING DATE: January 27, 1999

COMMITTEE ON: Health and Human Services

TITLE: (Hilgert, Dw. Pedersen) Provide powers and duties to the Dept. of Health and Human Services Regulation and Licensure relating to pain management and treatment

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7	Yes	Senators Jensen, Byars, Dierks, Price, Suttle, Thompson, Tyson
	No	
	Present, not voting	
	Absent	

PROPOSERS	REPRESENTING
Senator John Hilgert	Principal Introducer
Julie Schmit-Albin	Nebraska Right to Life
John Lindsay	Nebraska Association of Trial Attorneys
Vicki Duerr	Self
Don Moldenhauer	Self
David Parrish	Self

OPPOSERS	REPRESENTING
None	

NEUTRAL	REPRESENTING
David Buntain	Nebraska Medical Association
Jim Cunningham	Nebraska Catholic Conference

SUMMARY OF PURPOSE AND/OR CHANGES:

LB 226 prescribes specific statutory guidelines related to pain management. The bill provides legislative findings and defines terms. "Accepted guidelines" are defined as care and practice guidelines for pain management, developed by a nationally recognized organization or by rules and regulations of the Nebraska Department of

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Health and Human Services Regulation and Licensure (the department). Such guidelines must conform to the intent of the bill, and guidelines dealing with coverage, payment or reimbursement are unacceptable if offered to limit pain management options otherwise covered in the bill. Guidelines cannot be inconsistent with section 4(2)(e) below. The department can determine that an otherwise acceptable guideline is nevertheless inconsistent with section 4(2)(e). A guideline not invalidated by the department, however, may still not provide immunity in a particular case if inconsistent with section 4(2)(e). "Therapeutic purpose" is defined as "the use of pharmaceutical and nonpharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management."

Immunity from a disciplinary action or criminal prosecution is provided for a health care provider who prescribes, dispenses or administers medication, including a controlled substance, for a therapeutic purpose. In order to avoid such action or prosecution, the provider must demonstrate substantial compliance with accepted guidelines for pain management within his or her scope of practice. Such showing may only be rebutted by clinical expert testimony. Clinical expert testimony must be produced to support a finding or charge brought against the provider under this section. Evidence of noncompliance with an accepted guideline, by itself, is insufficient. Clinical expert testimony may also be offered to show that an otherwise acceptable guidelines is nevertheless inconsistent with section 4(2)(e) of the bill. Immunity is provided for a pharmacist who acts in reasonable reliance on a purported physician's prescription.

LB 226 does not expand the scope of practice of any health care provider. A provider is subject to a disciplinary action or criminal prosecution for various named actions, including *"causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual, except that it is not causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual to prescribe, dispense, or administer medical treatment for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as it is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason."* LB 226, section 4(2)(e) (emphasis added).

The Department of Health and Human Services Regulation and Licensure must make reasonable efforts to notify health care providers of the bill's existence, including, at a minimum, informing a provider whose pain management practices are under investigation by the department.

LB 226 creates the Pain Management Advisory Committee, provides duties for the committee and a termination date. The committee includes 13 members appointed by the Governor. The committee is charged with attempting to identify and develop appropriate procedures and techniques for pain management, in consultation with the Governor, Legislature, Attorney General and other interested persons. A preliminary report is due by May 15, 2000, and a final report no later than December 1, 2000. The committee will terminate December 31, 2000.

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EXPLANATION OF AMENDMENTS, IF ANY:

The committee amendment is a rewrite of the bill.

Section 1 contains legislative findings relative to the appropriate use of excess dosages of controlled substances for the treatment of pain, so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing death for any reason, and so long as it conforms to policies and guidelines for the treatment of pain adopted by the Board of Examiners in Medicine and Surgery.

Section 2 provides that a licensed physician who administers a controlled substance in excess of the recommended dosage for the treatment of pain shall not be subject to discipline or criminal prosecution when: (1) in the judgment of the physician, appropriate pain management warrants such dosage; (2) the controlled substance is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason; and (3) the administration of the controlled substance conforms to policies and guidelines for the treatment of pain adopted by the Board of Examiners in Medicine and Surgery.

Section 3 directs the Board of Examiners in Medicine and Surgery to adopt policies and guidelines to ensure that physicians who are engaged in the appropriate treatment of pain are not subject to disciplinary action. The board is required to consider policies and guidelines developed by national organizations with expertise in pain management for such purpose.

Senator Jim Jensen, Chairperson